(2019) 03 P&H CK 0094

In the Punjab And Haryana At Chandigarh

Case No : First Appeal Order No. 7479 Of 2015, 626 Of 2016

Hansraj (Now Deceased) Through His Lrs And Anr. — APPELLANT

Vs

Naga Paswan And Others — RESPONDENT

Date of Decision : 07-03-2019

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2019) 03 P&H CK 0094

Hon'ble Judges : Avneesh Jhingan, J

Bench : Single Bench

Advocate : Ram Bilas Gupta, Munish Behl, Sanjiv Pabbi

Final Decision : Allowed

Judgement

Avneesh Jhingan, J

The aforesaid two appeals are being disposed of by a common order as they are arising out of the same accident and same award.

The award dated 27.05.2015 passed by the Motor Accident Claims Tribunal, Faridabad(for brevity 'the Tribunal') has been assailed by the legal heirs of Rajiv (deceased) by filing two separate appeals i.e. FAO No. 7479 of 2015 (filed by the parents of the deceased) and FAO No. 626 of 2016 (filed by widow and minor daughter of the deceased) seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act')

Parents of Rajiv are the appellants in FAO No. 7479 of 2015 and widow and minor daughter are the appellants in FAO No. 626 of 2016.

The driver of truck bearing registration No. HR-38-Q-8841 (hereinafter referred to as the 'offending vehicle'), owner and insurer (i.e. National Insurance Co. Ltd.) are respondents No.1 to 3 respectively in both the appeals.

The brief facts necessary for adjudication of the present appeal are that on 12.08.2013, Rajiv was going on his motorcycle bearing registration No. HR-29-

M-9559. When he reached near the Transport Nagar, Near Sector 58 in front of G.T.Road, village Jharsaintly, Ballabgarh, his motorcycle was hit by a rashly and negligently driven offending vehicle. As a result of the impact, he sustained grievous injuries and died at the spot. FIR No. 508, dated 12.08.2013 was registered at Police Station Sector 55, Faridabad.

A claim petition under Section 166 of the Act was filed. The Tribunal after considering the facts and on appreciating the evidence adduced, held that the accident was caused due to rash and negligent driving of the offending vehicle. The Insurance company was directed to pay the compensation at first instance and then to recover the same from the owner and driver of the offending vehicle. The Tribunal awarded compensation of Rs.8,75,000/-alongwith interest @ 7.5% per annum. The amount awarded included Rs.1,00,000/- for loss of love and affection and Rs.10,000/- for funeral expenses.

In the claim petition, it was pleaded that the deceased was 29 years old he was driver of heavy vehicle and was earning Rs.15,000/- per month. But the claimants failed to prove the monthly earning of the deceased. The driving licence for heavy vehicle was produced before the Tribunal as Mark 'A' to substantiate his occupation. The Tribunal assessed the monthly income of the deceased as Rs.5000/-, 1/4th deduction for self-expenses was made and multiplier of '17' was applied.

Heard learned counsel for the parties and perused the record. Learned counsel for the appellant(s) contends that the Tribunal erred in assessing the monthly income of the deceased as Rs.5000/-, which is even less than the minimum wages prevalent in the State for an unskilled labourer. His grievance is that no future prospects have been awarded.

Learned counsel for the insurer contends that the Tribunal has rightly assessed the monthly income of the deceased as Rs.5000/-, as claimants failed to prove the monthly earning of the deceased. He further contends that the amount under the conventional heads be awarded in consonance with the decision of the Supreme Court in National Insurance Co. Ltd. vs. Pranay Sethi and others; 2017 (4) RCR (Civil) 1009. His grievance is that no amount can be awarded for loss of love and affection.

The contention raised by learned counsel for the appellants deserves acceptance.

The deceased was 29 years old and was having driving licence for driving heavy vehicles, aLBEIT, claimants failed to substantiate the monthly income of the deceased. In such circumstances, it would not be appropriate to equate him with an unskilled labourer. Having clue from the minimum wages and considering him to be a semi-skilled labourer, his monthly income is assessed as Rs.5500/-.

Having due regard to the decisions of the Supreme Court in Parnay Sethi's case (supra) and Hem Raj vs. Oriental Insurance Company Ltd. 2018 (2) PLR 480; 40% future prospects are awarded, as the deceased was below 40 years and falls in the category of self employed or having fixed wages.

As the quantum of compensation is being revisited, it would be appropriate that the amounts under the conventional heads are awarded in consonance with the decision of the Supreme Court in Pranay Sethi's case (supra). The claimants are entitled to Rs.15000/- each for funeral expenses and for loss of estate. Further an amount of Rs.40,000/- is awarded to the widow for loss of consortium.

In view of above discussion the compensation is recalculated as under:

Head

Compensation awarded

(i)

Monthly income

Rs. 5500/- per month

(ii)

Future prospects at 40%

Rs. 2200/-

(iii)

Total Income

Rs. 7700/- per month

(iv)

Deduction of personal expenses

Rs. 1925/- (i.e. 1/4th of total income)

(v)

Multiplier

17 (as per age of deceased)

(vi)

Loss of income

5775x12x17= Rs.11,78,100/-

(vii)

Funeral expenses

Rs.15,000/-

(viii)

Loss of estate

Rs.15,000/-

(ix)

Loss of consortium

Rs. 40,000/-

Total Compensation awarded

Rs.12,48,100/-

The award dated 27.05.2015 is modified to the extent that amount of Rs.8,75,000/- awarded by the Tribunal is enhanced to Rs.12,48,100/-. The claimants shall be entitled to the enhanced amount alongwith interest @7.5% per annum from the date of filing of the claim petition till the realization of the amount in the proportion as awarded by the Tribunal.

Both the appeals are allowed in the afore-said terms.

